

APPLICANT:
Hart Heritage Properties, LLP

**REQUEST: Modification of approval in
Case No. 5311, to allow up to 55 residents
in Adult Day Care and Assisted Living Facility;
and variance for driveway within 50 foot use
setback**

HEARING DATE: May 3, 2006

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5529**

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Hart Heritage Properties, LLP

LOCATION: 1913 Rock Spring Road, Forest Hill, Maryland 21050
Tax Map: 40 / Grid: 1E / Parcel: 134
Third (3rd) Election District

ZONING: R2 / Urban Residential

REQUEST: Modify an existing special exception for an adult day care facility to increase the maximum number of adult residents to 55; modify an existing special exception for an assisted living facility to increase the maximum number of residents to 55; and a variance, if necessary, pursuant to Section 267-36B, Table V of the Harford County Code, to allow a driveway, turnaround, stoop, utility and storm water appurtenances to be located within the 50 feet use setback.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant first testified Kenneth Skidmore, who identified himself as the Director of Hart Heritage Properties, LLP.

Hart Heritage Properties, LLC is the owner of the subject property. For 18 years the Applicant has owned and operated an assisted living facility on Grier Nursery Road which contains 37 beds. In Mr. Skidmore's opinion a need exists in Harford County for additional assisted living facilities.

Mr. Skidmore explained that the Applicant had received approval in Zoning Appeal Case No. 5311, decided in 2003, for an adult day care and assisted living facility on the subject property. The proposed facility in design and appearance will be very similar to that described in Case 5311.

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The subject property adjoins Rock Spring Village, which is another assisted living facility but which provides a lower level of care than that proposed by the Applicant. Hart Heritage Properties proposes to provide up to a Level of Assistance 3 at the subject property.

The Applicant proposes, as explained by Mr. Skidmore, to construct a facility which will provide assisted living space for 55 residents, and which would also serve up to 55 residents in an adult day care facility. This will be an increase from the 40 originally approved for the assisted living facility in Case No. 5311, and from the 36 clients for which approval was originally granted for the adult day care facility.

In explaining the Applicant's reason for requesting an increase in the number of full time residents and day care residents, Mr. Skidmore explained the Applicant had unexpectedly run into environmental issues on the subject property. These issues caused the proposed construction cost of the facility to increase. Accordingly, the Applicant needs to increase the number of individuals to whom it will provide services. Even though the variance requested is relatively minor in nature, the Applicant attempted and was not able to construct the building as proposed without a slight encroachment into the 50 foot use setback.

Next for the Applicant testified Michael Fisher, who is employed by Site Resources, Inc. Mr. Fisher is a registered landscape architect and is an expert site plan designer. Mr. Fisher testified he had developed a site plan for the property.

Mr. Fisher identified a number of differences from the plan as now proposed and that as approved in 2003:

- * The project now calls for a three story building as opposed to the two story building originally proposed.
- * An entrance to the building on its north side encroaches into the 50 foot use setback.
- * Less impervious area is shown on the south side of the building than as originally proposed.
- * Six parking spaces are being added.
- * There is a slight encroachment into the 50 foot use setback on the south side.

Mr. Fisher also identified a minor change to the building coverage calculations which was caused by an incorrect calculation on the original site plan. Other site characteristics, however, remain the same. Mr. Fisher stated that the site is approximately 6.5 acres in size, of which 2.4 acres is in a Natural Resource District. The buildable area is located in the front and rear of the parcel. The middle part of the site is heavily impacted by a Natural Resources District and is not buildable.

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Mr. Fisher identified residential condominiums to the rear or east of the property; the Forest Lakes residential subdivision lies across MD Route 24 to the west of the property; a veterinarian clinic lies to the south and adjoins the parcel. As earlier testified to, Rock Spring Village lies to the north.

A house originally on the site had been demolished. Some trees will be retained. An additional change to the plan, according to Mr. Fisher, is that fewer trees are now to be removed which will result in less of an impact than originally proposed.

Mr. Fisher attempted to avoid encroaching upon the 50 foot use setback but was not able to do so. The encroachment is relatively minor in nature, and consists of a small portion of the building entrance on its north side encroaching within the 50 foot use setback. The driveway on the south side of the building also is slightly closer to the property line than originally proposed. The driveway also encroaches slightly into the 50 foot use setback.

Next for the Applicant testified J. Mark Keeley, offered and accepted as an expert transportation planner. Mr. Keeley identified Rock Spring Road as a principal arterial urban road designated as such under the County Transportation Plan. Rock Spring Road (Route 24) at that location has a 45 mph speed limit, with 11 to 13 foot wide travel lanes, and 10 foot shoulders.

The Applicant will be required to install acceleration and deceleration lanes. There is adequate sight distances in either direction on MD Route 24.

A 55 bed assisted living facility, according to the I.T.E. Manual, will generate approximately 8 morning peak hour trips, and approximately 12 evening peak hour trips. The average total trips per day would be 146.

An adult day care center is not covered by the I.T.E. Manual. However, Mr. Keeley understands that the Applicant will be using vans to transport the residents to and from the adult day care program which will generate about 12 trips per day. He also estimates employees will generate approximately 20 trips per day.

Mr. Keeley concluded that the daily trips to be generated by the facility will be minimal and will have no adverse impact upon the traffic along Route 24.

Next for the Applicant testified Rowan Glidden, offered and accepted as an expert in land use planning and zoning. Mr. Glidden identified the zoning of the subject property as R2, Urban Residential. The adjoining property is also R2, except for Rock Spring Village which is B2.

Mr. Glidden opined that the proposed use is consistent with the Harford County Master Land Use Plan, which identifies the use of the property as medium intensity. Mr. Glidden believes that the proposed use would have no significant impact on the use of any surrounding property. Certainly, in his opinion, the proposal at the subject property would have no greater impact than would a similar use somewhere else within the County.

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He also believes that the property, given its narrow width, relatively long depth, and with the middle of the property being highly impacted by environmental features, is accordingly affected by a unique set of circumstances that limit the development of the property. He believes these circumstances are sufficient for the granting of the variance.

The granting of the variance will not adversely effect the surrounding neighbors' safety or welfare.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune testified that the Applicant meets all applicable requirements, except for slight impacts into the 50 foot use setback..

The modifications requested do not change any of the impacts of the property. There should be no increased impact on the area or surrounding uses, provided the conditions recommended by the Department of Planning and Zoning are complied with. Mr. McClune believes that the project is now better suited to service at-need residents than as originally proposed.

Regarding the requested setback variances, the encroachment to the 50 foot use setback to the north side is by a stoop which is located in the area of an entrance on the north side of the building, to the rear of the parcel. The fact that it encroaches upon the 50 foot use setback is not visually noticeable. The slight impact on the south side of the driveway within the 50 foot use setback is in a wooded area and is not noticeable.

Mr. McClune explained the configuration of the subject site is odd, with the mid portion of the property being totally unusable because of existing wetland features. In his opinion, and the opinion of the staff, this provides a unique condition which justifies the granting of the variances.

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

Section 267-53C(4) of the Harford County Codes states:

“(4) Day-care centers. [Amended by Bill No. 90-6]

(a) These uses may be granted in the AG, RR, R, R1, R2, R3, R4 and VR Districts, provided that:

[1] A minimum parcel area of one-half acre is established.

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- [2] *Access to the facility shall be from an arterial or collector road, with all outdoor play areas located in a solid-fenced or screened area in the rear of the building.*
- [3] *The operation may be conducted in a previously existing structure, or if a new structure is constructed, the architecture of the building shall be harmonious with other architecture within the neighborhood.*
- [4] *If the operator of a day-care center operated in a church, private school or public school has obtained a zoning certificate under the provisions of Section 267-26D(12) of this chapter, the day-care center is exempt from the requirements of this Subsection C(4)."*

Section 267-53F(7) of the Harford County Code states:

- "(7) Nursing homes and assisted living facilities. These uses may be granted in the AG, RR, R, R1, R2, VR, VB, and B1 Districts, provided that:*
 - (a) A minimum parcel area of five acres is established and a maximum building coverage of 40% of the parcel is provided.*
 - (b) The setbacks of the district for institutional uses shall be met.*
 - (c) The density shall not exceed 20 beds per acre of the parcel."*

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

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- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Harford County Code Section 267-9I, Limitations, Guides and Standards, is also applicable to this request and will be discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

This unimproved, 6.48 acre parcel located just north of Bel Air on MD Route 24 was originally approved for an assisted living facility and adult day care center by Case No. 5311, decided February 19, 2003. That decision, in addition to granting the Applicant's requests for special exceptions to allow 36 clients in the adult day care center and 40 residents in the assisted living facility, also granted a variance to allow the driveway to be located within the 50 foot use setback. The Hearing Examiner in that case found:

“The parcel is long and narrow and is bisected by wetlands located in the middle of the property. There is an existing bridge over the stream located near the middle of the parcel. The proposed driveway location utilizes the location of an existing bridge. The turnaround configuration located within the 50 foot use setback results from the unique features on the property, according to the testimony. Existing wetlands, stream, pond and associated buffers coupled with the elongated shape of the parcel result in the need for the variance in order to utilize both halves of the parcel. Without the variance testimony indicates that two-thirds of the property would not be usable.”

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The Applicant now argues that the proposal as originally envisioned, is no longer economically feasible. This is due, according to the Applicant, to the environmental features on the site which were clearly described by the Hearing Examiner in the Case in 2003, and by the testimony in the instant case. The subject property is, obviously, highly constrained by environmental features that necessitate the granting of a variance if the property is to be used for virtually any legitimate purpose, certainly including the purposes envisioned by the Applicant.

The variances now requested are relatively minor in nature. The relatively slight redesign of the building necessitated by an increase in capacity has now resulted in a northern entrance stoop being located very slightly within the 50 foot use setback. The slight redesign of the driveway turnaround on the south side also puts it in the 50 foot use setback. It is found that the requested variances are minor in nature, have no impact whatsoever on the use of the surrounding parcels, and will be virtually undetectable by any objective observer. They are each necessitated by unique features of the property which limit development and, if relief is not granted, would cause a hardship to the Applicants.

There will be no adverse impacts and it is, accordingly, found that the variances should be granted.

The Applicant also requests a modification of special exceptions previously granted. A day care center, according to Section 267-53C(4) shall be granted provided it meets the following conditions:

(4) Day-care centers.

(a) These uses may be granted in the AG, RR, R, R1, R2, R3, R4 and VR Districts, provided that:

The property is zoned R2.

[1] A minimum parcel area of one-half acre is established.

The property is 6.5 acres in size.

[2] Access to the facility shall be from an arterial or collector road, with all outdoor play areas located in a solid-fenced or screened area in the rear of the building.

Access to the facility is from an arterial road. No outdoor play area is proposed or is appropriate for this use.

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[3] The operation may be conducted in a previously existing structure, or if a new structure is constructed, the architecture of the building shall be harmonious with other architecture within the neighborhood.

The architecture of the building is found to be harmonious with the architecture in the neighborhood. Testimony is that the architectural appearance of building will not change from that previously approved.

[4] If the operator of a day-care center operated in a church, private school or public school has obtained a zoning certificate under the provisions of Section 267-26D(12) of this chapter, the day-care center is exempt from the requirements of this Subsection C(4).

This section is not applicable.

Accordingly, it is found that the Applicant has met the specific requirements of Section 267-53C(4).

Section 267-53F(7) governs the review of assisted living facilities as a special exception. Those requirements are as follows:

(7) Nursing homes and assisted living facilities. These uses may be granted in the AG, RR, R, R1, R2, VR, VB, and B1 Districts, provided that:

The property is zoned R2.

(a) A minimum parcel area of five acres is established and a maximum building coverage of 40% of the parcel is provided.

The parcel area is approximately 6.5 acres in size. The proposed building coverage is less than 10% of the total lot size.

(b) The setbacks of the district for institutional uses shall be met.

With the variances as granted, this condition is complied with.

(c) The density shall not exceed 20 beds per acre of the parcel.

This condition is easily met.

Accordingly, the specific requirements of § 267-53F(7) are also met.

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An analysis of Section 267-9I, Limitations, Guides and Standards, is now necessary in order to determine if the Applicant meets the more generalized requirements of this Section.

- (1) *The number of persons living or working in the immediate area.*

The area in which the proposed use is to be located is generally a residential area with some light commercial use. It is found that the proposal will provide a needed service to Harford County residents, and will have no adverse impact on the community in which it is to be located.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The proposed use is located on an arterial road. Testimony was that sight distances are adequate. The Staff Report notes there the Ma and Pa Heritage Trail is available to the rear of the property, which should be accessible to residents. Accordingly, it is found there will be no adverse impact due to traffic conditions, and that there is an available walking trail for the residents use.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposed use is consistent with the Harford County Master Land Use Plan. It is consistent with the uses now located in the neighborhood. There is no evidence of an adverse impact on the fiscal climate of the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

Testimony indicated that none of these factors will be present.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. Local volunteer fire departments will handle fire protection and emergency needs. Public water and sewer service is available and will service the property.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is consistent with generally accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

There are schools and churches located in the general area. The proposed use will have no adverse impact on any of these existing uses.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Harford County Master and Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

While there are environmental features on-site, the proposed location of the structures will have no adverse impact on those features.

- (10) *The preservation of cultural and historic landmarks.*

This is not applicable to the request.

Special exceptions are uses which have been legislatively predetermined to be acceptable and compatible with uses in the underlying zoning district, provided both the specific and general conditions attached to their review are met. The Harford County Council has determined, by making adult day care facilities and assisted living facilities special exceptions in this residential district, that these uses are to be allowed provided that no determination is made that any specific or general conditions are violated.

It is further found that there are no facts or circumstances which show that the requested modifications of these special exceptions at the location proposed would have any adverse effect above and beyond those inherently associated with such uses irrespective of their location within the zone.

Based on testimony in this case, and upon review of the findings made in Case No. 5311, it is found that there would be no adverse impact from the proposed uses and, in fact, the uses would tend to provide a valuable service to present and future Harford County residents.

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CONCLUSION:

For the above reasons it is recommended that the proposed variance and modifications to the existing special exceptions be approved, subject to the following conditions:

1. An amended site plan shall be submitted for review and approval. The site plan shall generally conform to the plan submitted as Attachment 2.
2. This approval shall limit the number of clients in the adult day care facility to 55.
3. This approval shall limit the number of beds in the assisted living facility to 55 beds.
4. A final landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval.

Date: June 12, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 12, 2006.